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In re Application of

WERNICKE, et al.

Application No.: 09/979,507

PCT No.: PCT/DE00/00881

Int. Filing Date: 24 March 2000

Priority Date: 25 March 1999

Attorney Docket No.: 3658-0103P

For: USE OF COLLAGENASE 3 FOR DETECTING  
DESTRUCTIVE DISEASES OF THE JOINTS,  
ESPECIALLY FOR PROGNOSING THE  
PROGRESSION OF THE DISEASE AND THE  
GENETIC PREDISPOSITION FOR  
RHEUMATOID ARTHRITIS

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This is in response to applicant's, "Petition For Revival of a PCT National Stage Application Abandoned Unintentionally Under 37 CFR § 1.137(b)" filed 23 November 2001. Applicant included the \$1280.00 petition fee.

### BACKGROUND

On 24 March 2000, applicant filed international application PCT/DE00/00881, which claimed priority of an earlier application filed 25 March 1999. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 25 September 2001.

On 25 September 2001, the application became abandoned for failure to pay the basic national fee for a U.S. national stage entry application.

On 23 November 2001, applicant filed the present petition accompanied by: a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. § 371; a check for \$2450.00 (1170.00 as payment for the basic national and other associated fees and \$1280.00 as payment of the petition fee under 37 CFR 1.17(m)); an English translation of the International Application; three sheets of drawings and a First Preliminary Amendment.

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### DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was the payment of the basic national fee. Applicant has provided this payment along with the present petition.

As to Item (2), a check in the amount of the \$1280.00 was included with the petition.

With regard to Item (3), applicant's statement that, "Failure to timely file the application, and thus abandonment was unintentional" is being interpreted to mean that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. If this is an incorrect reading of applicant's statement applicant should contact the PCT Legal Office immediately. Applicant's statement and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

### CONCLUSION

For the reasons stated above, the petition for revival is **GRANTED**.

This application is being returned to the DO/EO/US for processing in accordance with this decision, namely, the mailing of a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) for the reason stated above.



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